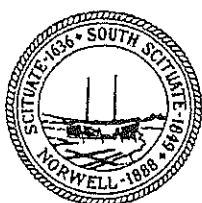


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OFFICE OF  
BOARD OF APPEALS

## TOWN OF NORWELL

345 MAIN STREET, P.O. BOX 295  
NORWELL, MASSACHUSETTS 02061  
(781) 659-8018 • Fax (781) 659-1892

### Members

Lois S. Barbour, Chair  
Philip Y. Brown, Vice Chair  
David Lee Turner, Clerk

### Associate Members

Thomas P. Harrison  
Ralph J. Rivkind

*AMENDED scrivener's error correction*

## FINDINGS AND DECISION

*of*

### The Norwell Board Of Appeals

*File No. 17-02*

A Public Hearing before the Norwell Zoning Board of Appeals was scheduled opened on March 1, 2017, and continued to April 5, 2017. The hearing was closed on and voted on that date under M.G.L. c. 40A, at the Norwell Town offices, 345 Main Street, Norwell, MA on the application of:

**Carlo J. Agostino**  
776 Main Street  
Hanover, MA 02339

For a **Special Permit** (Lot Size) and **Section 6 Finding** under M.G.L. c. 40A, Section 6, and for **Site Plan Review** under Section 1500 of the Norwell Zoning Bylaw to demolish the existing wood frame building, a non-conforming single-family dwelling, and replace it with a 4,992 sq. ft. two-story retail building, to be used for consumer sales, on a non-conforming lot that contains 21,895 sq. ft., situated in Business District B, where one-acre is required. The property, known and numbered as **370 Washington Street**, is shown on Assessors Map 12D Block 34 Lot 2 and recorded at Plymouth County Registry of Deeds Book 34885, Page 16.

The application, plans, and attachments were date-stamped by the Board of Appeals and the Office of the Town Clerk on February 8, 2017.

Notice of the public hearing was posted at Town Hall and duly advertised in the *Norwell Mariner* on February 16, 2017, and February 23, 2017, in accordance with the Open Meeting Law.

Bradley C. McKenzie, P.E., of McKenzie Engineering, representing the Applicant, presented the application to the Board and responded to questions during the course of the public hearing. No member of the public was present in support of or in opposition to this application nor were any written comments from the public received.

**FILE DOCUMENTATION:** The following documents, plans, and reports were received into evidence:

1. Copy of the legal notice
2. Abutters List
3. Assessor's card for 370 Washington Street, Norwell.
4. McKenzie Engineering transmittal letter, dated 1/22/17, for the project application signed by the owner, Mario V. Agostino, Trustee, CMP Realty Trust; and Carlo J. Agostino, applicant, including the following:
  - a. Completed Form ZBA-1A Site Plan Review: Supplemental Information
  - b. Plan set consisting of eight (8) drawings entitled "Site Development Plans/370 Washington Street/Norwell, Massachusetts", dated January 23, 2017, prepared by McKenzie Engineering Group, as signed and sealed by Bradley C. McKenzie, Registered P.E., consisting of the following:
    - Dwg 1 Cover Sheet
    - Dwg 2 General Notes, Legend, & Abbreviations
    - Dwg 3 Existing Conditions Plan
    - Dwg 4 Site Layout Plan
    - Dwg 5 Grading & Utility Plan
    - Dwg 6 Construction Details
    - Dwg 7 Construction Details
    - Dwg 8 Construction Details
  - c. Drainage Calculations and Stormwater Management Report, dated January 23, 2017, as prepared by McKenzie Engineering and signed and sealed by Bradley C. McKenzie, Registered P.E.
  - d. Architectural Plans, consisting of six (6) drawings, entitled "370 Washington Street/Norwell, MA", as prepared by bf architect, dated March 9, 2017, as follows:
    - A-1 First Floor Plan
    - A-2 Second Floor Plan
    - A-3 Front Elevation
    - A-4 Left Side Elevation
    - A-5 Right Side Elevation
    - A-6 Rear Elevation
5. Letter of March 15, 2017, to Board of Appeals from applicant's attorney Joseph E. Kelleher, Esq. of Kraus & Hummel, located at 99A Court Street, Plymouth, MA, relating to Variance request (relief granted without need for variance – filing fee returned)
6. Memo from Environmental Consulting & Restoration, LLC, dated 3/27/17, to McKenzie Engineering, relating to site wetland conditions
7. Memorandum of April 5, 2017, to Board of Appeals from applicant's attorney Joseph E. Kelleher, Esq. of Kraus & Hummel, located at 99A Court Street, Plymouth, MA, relating to the deed/title
8. Letter from Norwell Planning Board to Board of Appeals dated March 23, 2017, in support of the proposed project, that includes Chessia Consulting Services LLC peer review letter of February 8, 2017, as supplemented 3/23/17
9. Letter of May 10, 2017, from the applicant's attorney Joseph E. Kelleher, Esq. of Kraus & Hummel, located at 99A Court Street, Plymouth, MA, granting extension of time in which to file the decision to June 9, 2017

**FINDINGS OF THE BOARD:** Based upon the evidence received, the Board finds:

1. The Property is a legally established non-conforming lot that contains 23,895 square feet. It is in a B-1 Zoning District that now requires lots to contain a minimum of one acre. The Property contains a wood frame building that is non-conforming because it does not comply with current zoning district sideline and set-back requirements. The building is also non-conforming because its last use was as a single-family dwelling, not a use now allowed in the zoning district. However, this single-family dwelling use is no longer viable because it has been abandoned—not used for well over two years.
2. There are no regulated wetlands in or within one hundred feet of the Property.
3. There is no sub-surface sewage disposal permit presently issued for the proposed use of the Property for low density consumer sales, and, therefore, this decision must be upon the condition that such a permit shall be obtained for the Project proposed by the Applicant BEFORE any occupancy permit is issued for the Project.
4. The Site Plan peer review was completed by Chessia Consulting Services for the Planning Board. See Exhibit 8 with the referenced 18-page report from Chessia, as amended. Final Site plans, including drainage and sub-surface sewage disposal details, will require additional review and concurrence between the Applicant's engineer and Chessia, prior to endorsement by the Board.
5. The Applicant's engineer appeared before the Board at its hearing and indicated that the details to be included in the final plans and specifications would be reviewed, in accordance with this decision, with Chessia and conflicts resolved before work is commenced.
6. The proposed building sideline setback on the northerly side of the Property does not meet existing District Boundary and sideline setback requirements; however, it will increase that setback presently existing for the nonconforming dwelling. The removal of the nonconforming residential use and the decrease in that existing nonconforming setback, coupled with the conversion of a nonconforming use to an allowed use will have a positive impact upon the neighborhood and will meet existing use requirements.
7. As required, the Board has considered and determined that the proposed Project constitutes a reasonable use of the site for the purposes permitted by the regulations for the district in which it is located.
8. The Board is also required to consider and determine:
  - a. Will the approval and implementation of the proposed use, structure, and site plan be detrimental, offensive, or incompatible with the allowed and actual uses in and character of the existing and adjoining districts?
    - The Board finds that the proposed use, in the proposed building on the nonconforming site as shown on the site plan, as reviewed in the engineering and Planning Board reports will be reasonable, appropriate or allowed in that B-1 Zoning District and will not be offensive or incompatible with the allowed and existing uses and conditions in the existing and contiguous districts. The question can be answered in the negative.
  - b. Will the approval and implementation of the proposed use, structure or site plan, interfere with the convenience and safety of vehicular and pedestrian traffic and movement within the site and adjacent streets?
    - The Board finds that it will not and answers the question in the negative.
  - c. Are the methods proposed for the disposal of sewage, refuse and other waste resulting from the use proposed and allowed on the site and the methods for the drainage of surface water runoff from proposed parking and driveways adequate?
    - The Board finds that the approval of the proposed use, structure and site plans are reasonable and if properly implemented are both appropriate and adequate. The Board answers these questions in the affirmative.

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- d. Special Permit considerations: The proposed new structure will be larger than the existing nonconforming single-family dwelling but the use approved will be conforming. The building will be in scale and compatible with other structures in the Zoning District and along Washington Street. It will not be detrimental to the neighborhood or zoning district. The conduct of the proposed use will be appropriate to the character of the neighborhood. The conduct of the proposed use will not be injurious, noxious or offensive in the neighborhood by reason of odors, fumes, dust, smoke, noise or other cause, not hazardous to the community on account of fire, explosion or other cause.
- e. Nonconforming Use: The existing single-family house on the Property is nonconforming in its use and in its location on the site. The location nonconformity involves the sideline setback on the northerly side of the Property. The proposed location for the new replacement structure is in the same location of the building it is replacing, but farther away from the northerly sideline. The Board finds that the pre-existing nonconforming nature of a sideline setback will be reduced in the proposed plan, that the existing nonconformity in use will be eliminated, and that the use of the site for an allowed use with a reduced nonconforming sideline setback is in the public good and is appropriate to this project.
- f. Will the disposal of sewage, refuse, and waste resulting from the proposed use be properly handled on the site?
  - The Board finds that the Massachusetts Law and local Board of Health rules and regulations and a Special Condition of this decision provide the basis for answering this question in the affirmative.
- g. The Board finds all requirements for a Section 6 Finding, as requested by the Applicant, based upon the foregoing have been satisfied with no Variance needed.

**DECISION OF THE BOARD:** Based upon the submitted evidence, presentations by the Applicant's representatives, and findings above incorporated into and made a part of this decision, upon a motion duly made and seconded, Members Turner, Brown, and Barbour **VOTED** unanimously to grant the requested Special Permit and Section 6 Findings on property located at **370 Washington Street**, subject to the following:

**SPECIAL CONDITIONS:**

1. Certificate of Compliance: All construction must be done in accordance with the building plans on file in this case and for this site and other plans approved and signed by the Board, including the plans and documents approved by the Board and to be recorded with this decision. A certificate of compliance must be filed with and approved by the Board before any occupancy permit is issued for the use of this project. The referenced plan and certificate of compliance shall include references to and certification of compliance with the specific applicable Site plan contents listed in the Norwell Zoning Bylaw in Section 1520, paragraphs labeled a) through o), inclusive.
2. There is no sub-surface sewage disposal permit presently issued for the proposed use of the Property, as authorized in this decision; therefore, prior to issuance of any occupancy permit, evidence of a issuance of a septic disposal permit and Certificate of Compliance for the project from the Board of Health must be obtained.
3. The terms and requirements set forth in the Norwell Zoning Bylaw in Sections 1550 and 1560 shall be observed and complied with by the applicant.

## CONDITIONS APPLYING TO ALL SITE PLAN DECISIONS:

- 1 **RECORDING OF THE DECISION:** A certified copy of this Decision with all documents referenced in Paragraph 2 below shall be filed with the Registrar of Deeds or Recorder of the Land Court, as appropriate. The applicant shall return a copy of the recording fee receipt to the Board of Appeals for its files.
- 2 **PLAN DRAWING TO BE RECORDED WITH THIS DECISION:** The Applicant shall file the following mylar® sheet, as endorsed by the Board of Appeals on July 12, 2017, with the Registry of Deeds and/or Recorder of the Land Court; specifically:  
**Drawing 4** – Site Layout Plan of the "Site Development Plans for 370 Washington Street, Norwell, Massachusetts", dated January 23, 2017, as revised through 6/21/17, prepared by McKenzie Engineering Group, as signed and sealed by Bradley C. McKenzie, Registered P.E.
- 3 **EFFECTIVE DATE OF APPROVAL:** The zoning approvals granted by the Board of Appeals shall take effect only at such time as this Decision with requisite supporting documents and the endorsed plan set are filed with the Office of the Town Clerk of the Town of Norwell, and this decision with documents required in Paragraph 2 above are recorded with the Registrar of Deeds or Recorder of the Land Court.  
**NOTE: Evidence of recording of the Board's Decision and documents specified above shall be provided to the Building Inspector, prior to issuance of any building permit.**
- 4 **LAPSE OF SITE PLAN APPROVAL:** The Applicant shall complete any work described in the site plan approved by the Board of Appeals within one year of the date this Decision is filed with the Office of the Town Clerk or approval granted herein shall lapse.
- 5 **EXTENSION OF APPROVALS:** The Board of Appeals may grant an extension of such time as it may deem necessary to carry the approved site plan into effect. However, the applicant must file an application for any such extension prior to expiration or a new Site Plan application shall be required. Any such extension shall be certified by the Board of Appeals to the Town Clerk and shall include the date on which any such extension is to lapse.
- 6 **CONSTRUCTION MONITORING:** This project is subject to the construction monitoring and escrow requirements contained in Article H of the Rules and Regulations of the Board of Appeals, ratified 6/25/14, subject to any modifications as may be adopted from time to time.
- 7 **DESIGN ENGINEER CERTIFICATION:** Prior to the issuance of any occupancy permit, the Applicant's registered professional engineer, landscape architect, and such other professionals that prepared the approved plans, shall certify to the Board or its agent that the location and elevation of all underground utilities, including drainage, water and sewer, and landscaping plan substantially conform to the plans approved by the Board of Appeals as reviewed by its consulting engineer.
- 8 **PEER REVIEW:** Further, the project design shall be checked against the filed As Built plans and reviewed by the Town's consulting engineer at the sole expense of the Applicant for compliance with the project plans as approved by the Board of Appeals and detailed in this decision or any modifications thereto, prior to issuance of any Certificate of Occupancy.
- 9 **SITE LIGHTING CERTIFICATIONS:** Prior to issuance of a Certificate of Occupancy, the property owner shall provide to the Inspector of Buildings, certifications by a competent professional that all proposed exterior site lighting conforms to International Dark Sky Lighting guidelines.
- 10 **AS-BUILT PLANS: Prior to issuance of a Certificate of Occupancy,** the property owner or Applicant shall provide As-built plans, signed and stamped by a registered professional engineer, landscape architect, and/or professional land surveyor, as appropriate, in accordance with Section 1560 of the Norwell Zoning Bylaw and subject to peer review by the Board's consultant.
  - a. These plans shall show:

- i. Pavement locations, building locations, lot lines, access roadways, ways, and driveways to service the project, all utilities above and below ground such as water, gas, electric, septic, telecommunication, utility poles, manholes with rim elevations and inverts, catch basin rims and inverts, other drainage with pipe size and invert, and such other infrastructure as may be required to service the project.
  - ii. All utility easements; ties from building foundations to utility services.
  - iii. Final site grading including all drainage structures and lot grading must conform to the approved drainage design.
  - iv. All "As-Built" Plans shall include certifications that the plans comply with the approved plans and shall be signed and sealed by the professionals that prepared them.
- b. Further, the project design shall be checked against the filed *As Built* plans and reviewed by the Town's consulting engineer at the sole expense of the Applicant for compliance with the project plans as approved by the Board of Appeals.
  - c. No Certificate of Occupancy shall issue until documentation of a clean review by the Town's consulting engineer, which complies with all relevant conditions of this decision, is submitted to the Board of Appeals and the Inspector of Buildings with such other documents and/or certifications, as may be required by the Inspector of Buildings. Five (5) copies of each plan shall be submitted and distributed, as follows: the Inspector of Buildings (1 copy), Board of Appeals (3 copies), Town's consultant engineer (1 copy).
- 11 **CERTIFICATES OF OCCUPANCY:** No certificate of occupancy shall be issued until such time as all conditions of the Board's decision are met.

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1300 W. BAYVIEW  
ANN ARBOR, MI 48106

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Lois S. Barbour



Philip Y. Brown



David Lee Turner

*This space reserved for  
Date Stamp of Town Clerk*

Date Filed with Office of the Town Clerk

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APPEALS BOARD  
TOWN OF BOSTON

**NOTICE OF APPELLATE RIGHTS:** Any decision of the Board of Appeals may be appealed pursuant to Massachusetts General Laws, Chapter 40A, Section 17, to the Land Court or Superior Court Department within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activity is undertaken at the applicant's risk during the appeal period.